

Wilson
April 4, 1949

Henry F. Lesem, Supervisor
State Welfare Sanatorium
Tempe, Arizona

LAW LIBRARY ARIZONA ATTORNEY GENERAL

Dear Mr. Lesem:

In your letter of March 22 you ask for a ruling on two questions:

First: "Is there anything in the Arizona Code which would prohibit us from making a nominal charge of \$1.00 to \$1.50 per patient per day to the County Boards of Supervisors for medication and care provided at the Arizona State Tuberculosis Sanatorium, at Tempe, Arizona?"

second: "If these funds so received could be added to the appropriation given us by the legislature?"

We find no direct prohibition against such a charge as you suggest. However, the authority of a state agency or institution such as the Board of Health or the Welfare Sanatorium in the exercise of the particular duties for which it is created comes either from the Constitution or from the legislative act creating it. In the case of the Welfare Sanatorium, it was originally operated by the State Board of Social Security and Welfare, pursuant to its duties to give medical care for persons in need, i.e., to indigents. It has been operated not as a general hospital but for the purpose of caring for tubercular indigent patients, and as far as we can ascertain no charge has ever been made to these patients, nor do we find any direct authority for such charge. It was set up as one of the necessary incidents of public assistance to persons in need.

The Eighteenth Legislature, in Section 1 of Chapter 60, Regular Session 1947, transferred to the State Department of Health:

"* * * the authority and duty heretofore vested in and imposed upon the state board of social security and welfare to operate and maintain the state welfare sanatorium".

We believe that transfer carried no greater or lesser authority than had theretofore been vested in the State Board of Social Security and Welfare.

If, by your question No. 1, therefore, you mean: can the State Board of Health make a charge against the board of supervisors of any county for any needy person admitted from that county to the sanatorium upon the authority of the State Department of Health, we believe that is beyond the authority of the State Department, since we can find no authority therefor either specifically stated or indicated by the legislature.

However, Section 17-401, A.C.A. 1939 makes it the duty of the board of supervisors of each county "to provide for the hospitalization and medical care of indigent sick in such county, except in the case of the state welfare sanitarium, which shall be operated solely by the state board of social security and welfare", (now operated by the State Department of Health, pursuant to Chapter 60, supra).

Section 17-404 provides in brief that when an affidavit is made by any person to the board of supervisors:

"* * * that he is an indigent, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself with necessary hospitalization and medical care, and that he has been a resident of that county for the preceding twelve (12) months, except where treatment is given in the state welfare sanitarium, the affidavit shall state that he has been a resident of the state of Arizona for the preceding twelve (12) months" (emphasis supplied),

the board of supervisors shall provide hospitalization or medical care.

It would seem to us, therefore, that since the board of supervisors still has jurisdiction and the duty of providing hospitalization and medical care for the indigent sick, the legislature intended that the board should, in its discretion, care for certain patients by sending them to the State Welfare Sanatorium or to other hospitals. The statutes authorize and direct the supervisors to provide for such hospitalization and medical care in their annual budgets. In view of the fact that Chapter 60, in transferring the Welfare to the State Board of Health, in Section 3 thereof provided:

"The state board of health shall have power, and it shall be its duty to promulgate rules and regulations consistent with law for the operation of the state welfare sanatorium and any addition thereto or branches thereof as may be constructed or acquired",

we are of the opinion that if an indigent patient of the county is requested admission to the State Welfare Sanatorium by the board of supervisors, under the authority given the State Department of Health to make rules and regulations regarding operation of the sanatorium, it may make a reasonable charge to the board of supervisors for such patients.

With regard to your second question, we are of the opinion that pursuant to Section 4 of Chapter 60 (Section 8-803, A.C.A. 1939) the State Board of Health may use funds so collected in addition to the amounts appropriated by the legislature, since that section provides:

"The state department of health is designated as the official state agency to receive, administer and expend any funds granted, contributed or made available by the federal government, or appropriated by the state, or received from any other sources, for the treatment, prevention or control of tuberculosis, or the construction, alterations and improvements, and

Henry F. Lesem, Supervisor
State Welfare Sanatorium

April 4, 1949
Page 4

equipping of the state welfare
sanatorium".

Very truly yours,

FRED O. WILSON
Attorney General

LORNA E. LOCKWOOD
Assistant Attorney General

LEL:a